

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-3731-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**LANCE REYZER, SHARON REYZER, STATE FARM
INSURANCE AND HMO MIDWEST,**

PLAINTIFFS-RESPONDENTS,

V.

**MARTEN TRANSPORT, LTD. AND
JAMES FRANCES KEHOE, JR.,**

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Marten Transport, Ltd. and James Kehoe appeal a judgment awarding Lance Reyzer \$6,516.38 plus costs for injuries he allegedly

suffered in a motor vehicle accident.¹ The jury found that Marten Transport's and Kehoe's negligence was not a cause of Reyzer's spinal injuries. The trial court granted Reyzer's motion to change the jury's answer on causation from "no" to "yes." Because we conclude that credible evidence supports the jury's finding, we reverse the judgment, reinstate the jury's verdict and remand the cause for entry of a judgment in favor of the defendants.

The trial court changed the answer on causation because it concluded that the verdict was inconsistent with Marten Transport's concession of negligence and because there was no credible evidence to support the jury's verdict on causation. Marten Transport's stipulation that it was negligent does not compel the conclusion that its negligence or the accident caused Reyzer's injuries. Negligence and causation are separate inquiries. *See Fondell v. Lucky Stores, Inc.*, 85 Wis.2d 220, 226, 270 N.W.2d 205, 209 (1978). Even a concession that negligence caused the accident does not compel a finding that negligence caused the injury when there is evidence from which the jury could reasonably infer that the injuries were not caused by the accident. *See Schrank v. Allstate Ins. Co.*, 50 Wis.2d 247, 260, 184 N.W.2d 127, 134 (1971). Because the dispute in this case centered on whether Reyzer's spinal problems were caused by this accident, the trial court properly submitted that question to the jury and should have accepted the jury's finding.

The trial court was precluded from changing the jury's answer because there was some credible evidence to support it. *See Millonig v. Bakken*, 112 Wis.2d 445, 450, 334 N.W.2d 80, 83 (1983). We must consider the evidence

¹ This is an expedited appeal under RULE 809.17, STATS.

in the light most favorable to the verdict. *See* § 805.14(1), STATS. While this court should only overturn a circuit court's decision on the sufficiency of the evidence when the circuit court is "clearly wrong," the circuit court is clearly wrong when it overturns a jury verdict that is supported by credible evidence. *See Richards v. Mendivil*, 200 Wis.2d 665, 672, 548 N.W.2d 85, 88 (Ct. App. 1996).

Marten presented substantial credible evidence upon which the jury could reasonably find no causal link between the accident and Reyzer's spinal problems. Immediately after the accident, Reyzer reported that he felt fine. He returned to work without seeking medical attention, missing only one day because he lacked transportation. His work required him to lift 100 pound objects and occasionally 200 pound objects up to thirty-three times per day. After the accident, he continued to play basketball, throw a football, do daily sit-ups, work in his garden, bicycle and shovel. He applied for a new job and listed no physical impairments on the application. Dr. Fielden's examination revealed no limitations of motion two and one-half years after the accident and four months before the herniated disk was diagnosed.

Reyzer argues that the jury's verdict on causation is not supported by credible evidence because all of the expert witnesses agreed that there was a causal link between the accident and Reyzer's injuries. This argument fails for two reasons. First, it is contrary to the evidence. Dr. Robert Fielden testified that he found "no evidence of an injury or residuals of any injury whatsoever" when he examined Reyzer after the accident and before the surgery. Whether Fielden's statement that he does not fault Reyzer for initially seeking treatment constitutes an inconsistency is for the jury to decide. On Fielden's testimony alone, the jury could reasonably find that Reyzer's spinal problems were not related to the accident. Second, the jury is not required to accept the testimony of expert

witnesses, even if their opinions are uncontradicted. *See Krueger v. Tappan Co.*, 104 Wis.2d 199, 202, 311 N.W.2d 219, 221 (Ct. App. 1981). The opinion of the medical witnesses depended in large measure on Reyzer's statements to them. The jury could reasonably reject the medical witnesses' conclusions because they were not supported by accurate underlying facts. *See Milbauer v. Transport Employees' Mut. Benefit Society*, 56 Wis.2d 860, 867, 203 N.W.2d 135, 139 (1973).

The jury could reasonably find that Reyzer failed to meet his burden of proving that his spinal problems were caused by the traffic accident. Because the jury's verdict is supported by credible evidence and is not inconsistent with conceded facts, its verdict must stand.

By the Court.—Judgment reversed and cause remanded.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

